

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEO ARCHER,

Petitioner,

No. CIV-S-04-2249 MCE KJM P

vs.

SOLANO COUNTY SUPERIOR COURT,

Respondent.

ORDER

Petitioner, who is represented by counsel, is currently a California detainee following a finding of not guilty by reason of insanity to a charge of grand theft from a person. Petitioner has filed an application for writ of habeas corpus under 28 U.S.C. § 2254.

Petitioner asks that this action be stayed pending the exhaustion of state court remedies with respect to certain claims. Direct review of petitioner's revocation of outpatient release is ongoing. Counsel for petitioner also contemplates filing actions for collateral relief in state court. What is not clear is whether state court remedies have been exhausted with respect to any claims identified in petitioner's habeas petition that are at least colorable, not moot, and that counsel does not intend to abandon. The court cannot stay an action containing no exhausted claims. See Jiminez v. Rice, 276 F.3d 478 (9th Cir. 2001) (upholding dismissal of a

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1 completely unexhausted habeas petition despite the fact that the habeas petitioner asked for a stay
2 so that he could exhaust).

3 Good cause appearing, the court will deny petitioner's request for a stay without
4 prejudice to refile within thirty days. In the renewed motion, petitioner must show that he has
5 exhausted state court remedies with respect to at least one colorable claim asserted in petitioner's
6 original application for writ of habeas corpus that petitioner intends to pursue.

7 Accordingly, IT IS HEREBY ORDERED that petitioner's June 22, 2006 motion
8 for stay is denied without prejudice to re-filing within thirty days of this order.

9 DATED: December 11, 2006.

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12 U.S. MAGISTRATE JUDGE

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